

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 23966-7-III

Respondent,

Division Three

v.

NORMAN EDDIE COX,

UNPUBLISHED OPINION

Appellant.

BROWN, J.—Following a stipulated facts bench trial, Norman Eddie Cox was convicted of manufacturing a controlled substance, methamphetamine. On appeal, Mr. Cox contends (1) the search warrant lacked necessary corroborating facts to satisfy the basis of knowledge requirement for a confidential informant, and (2) no nexus is shown between the suspected crime and the place searched. We disagree and affirm.

FACTS

On March 13, 2003, a warrant was issued to search Mr. Cox's residence at 5119 N. Oakland in Spokane, Washington. Spokane County Sheriff's Detective Dave Herrin prepared the supporting affidavit. As noted below, the affiant averred a reliable

confidential informant (C.I.) reported Mr. Cox's methamphetamine manufacturing activity at his residence. However, the affidavit was unclear as to the CI's basis of knowledge. Thus, the facts focus on whether the other affidavit contents supply corroborating facts to satisfy the necessary basis of knowledge requirements.

On December 2, 1997, Detective Herrin had been involved in executing a search warrant at the Cox residence at 5119 N. Oakland Road to search for a suspected illicit methamphetamine lab. A methamphetamine lab and a marijuana grow operation were found on the premises. Mr. Cox was not present at the time the search warrant was executed, but two others, Cindy Hansen and Lucky Carey, were present and were arrested in connection with the manufacture of methamphetamine at that location.

On May 31, 2000, a local farm/feed store informed the sheriff's office that Mr. Cox had purchased one gallon of seven percent tincture of iodine. Iodine is a common ingredient used in the manufacture of methamphetamine.

In September 2000, the sheriff's office received an anonymous tip that Norman Cox and Cindy Cox (believed to be Cindy Hansen) were living in the Otis Orchards area and were involved in the manufacture and distribution of methamphetamine.

On October 3, 2002, Ms. Hansen purchased two boxes of pseudoephedrine HCL at a local retail store. She drove away in a pickup registered to Mr. Cox.

On October 29, Mr. Cox and an unidentified male each purchased two boxes of pseudoephedrine HCL. They left the store in a car registered to Mr. Cox.

On November 19, Ms. Hansen purchased three 96-count boxes of pseudoephedrine HCL. Ms. Hansen left

the store in the car registered to Mr. Cox. The same day, Ms. Hansen and an unidentified woman each purchased another three boxes of pseudoephedrine HCL. Once again, they left in the car registered to Mr. Cox.

On December 13, Ms. Hansen and the same unidentified woman were under surveillance purchasing a total of eight boxes of pseudoephedrine HCL and leaving in the car registered to Mr. Cox.

On December 21, an unidentified male purchased two boxes of pseudoephedrine HCL and left in the car registered to Mr. Cox.

On January 4, 2003, the same unidentified man was seen purchasing another three boxes of pseudoephedrine HCL and driving away in the same car.

On February 19, Ms. Hansen purchased two boxes of pseudoephedrine HCL at a local retail store and left in the car registered to Mr. Cox.

On February 25, a C.I. told Spokane County Sheriff's Deputy Jack Rosenthal that Mr. Cox cooked two to three ounces of methamphetamine in his home one to two times per week. The C.I. further indicated that Mr. Carey taught Mr. Cox how to cook methamphetamine.

On March 8, Ms. Hansen was seen purchasing three more boxes of pseudoephedrine HCL. She once again left in the car registered to Mr. Cox.

On March 11, Detective Herrin verified Mr. Cox was the utility subscriber for the property at 5119 N. Oakland Road since 1991. Detective Herrin related he had seen the vehicles involved in the pseudoephedrine purchases parked at the Oakland Road residence on numerous occasions since

November 2002.

The search warrant produced ample methamphetamine manufacturing evidence against Mr. Cox. Mr. Cox then provided incriminating statements. Mr. Cox unsuccessfully moved to suppress the evidence. The trial court reasoned sufficient corroborating facts existed to support probable cause for search warrant issuance even if the C.I.'s basis of knowledge was unclear.

Following a stipulated bench trial, Norman Cox was convicted of manufacturing a controlled substance, methamphetamine. He appealed.

ANALYSIS

The issue is whether, considering C.I. reliability is unchallenged, the trial court erred in concluding the affidavit facts sufficiently corroborated the C.I.'s basis of knowledge and supplied probable cause for search warrant issuance.

A search warrant affidavit must raise reasonable inferences that the defendant is involved in criminal activity and that evidence of that activity will be found in the place to be searched. *State v. Cole*, 128 Wn.2d 262, 287-88, 906 P.2d 925 (1995).

“Issuance of a search warrant is a matter of judicial discretion and is reviewed only for abuse of that discretion.” *State v. Dobyys*, 55 Wn. App. 609, 620, 779 P.2d 746 (1989) (citing *State v. Smith*, 93 Wn.2d 329, 610 P.2d 869 (1980)). “The affidavit must be accepted on its face and any doubts should be resolved in favor of the warrant.” *Id.* (citing *State v. Fisher*, 96 Wn.2d 962, 639 P.2d 743 (1982)).

Generally, when the probable cause affidavit is based on an informant's hearsay, it must show informant reliability

and the basis of the informant's knowledge. *Aguilar-Spinelli*.¹ The *Aguilar-Spinelli* test is two-pronged, (1) credibility/reliability and (2) basis of knowledge. The credibility prong may be satisfied by an informant's track record, if any, or by showing the informant was acting against his penal interest. *State v. Jackson*, 102 Wn.2d 432, 437, 688 P.2d 136 (1984). The basis of knowledge prong may be satisfied if the informant has personally witnessed the facts asserted. *Id.*

The State argues corroborating facts may remedy prong insufficiencies. *State v. Murray*, 110 Wn.2d 706, 712, 757 P.2d 487 (1988). If an informant's tip fails under either or both of the two prongs of *Aguilar-Spinelli*, probable cause may yet be established by independent police investigatory work that corroborates the tip to such an extent that it supports the missing elements of the *Aguilar-Spinelli* test. *Jackson*, 102 Wn.2d at 437. Thus, if a police investigation reveals suspicious activity along the lines of the criminal behavior proposed by the informant, then a corroborating investigation may yet support probable cause under *Aguilar-Spinelli*. *Id.* at 438. More than public or innocuous facts must be corroborated. *Id.*

Here, the C.I. related Mr. Cox was cooking methamphetamine in his home in Otis Orchards one to two times per week and that he had been taught to cook methamphetamine by another man, Mr. Carey. An independent investigation showed Mr. Cox owned a home in Otis Orchards and that property had been the site of a

¹ *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).

methamphetamine lab six years prior. Mr. Carey was arrested in connection with the operation of that lab, thus, corroborating that Mr. Cox and Mr. Carey were acquainted and that Mr. Carey was likely knowledgeable about the manufacture of methamphetamine. Ms. Hansen had also been then arrested.

Ms. Hansen had been observed frequently over a long period of time purchasing quantities of pseudoephedrine tablets, a precursor to methamphetamine. After each purchase, she would leave in a pickup or car registered to Mr. Cox. On October 29, 2002, Mr. Cox and an unidentified male were each observed purchasing two boxes of pseudoephedrine HCL. They left in the car registered to Mr. Cox. Other persons observed purchasing large amounts of pseudoephedrine were seen leaving in the car registered to Mr. Cox. The particular vehicles were seen by officers at the Cox residence on numerous occasions after November 2002.

This information corroborates more than innocuous details. The facts show suspicious activity suggesting the methamphetamine manufacture reported by the informant. Thus, sufficient evidence corroborates the informant's information.

Mr. Cox contends an insufficient nexus exists between the alleged criminal activity and his residence. In *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999), the Washington Supreme Court held a reasonable nexus must be shown between the illegal activity and the place to be searched.

Here, the C.I. reported the illegal lab was operating at Mr. Cox's residence. Mr. Cox, Ms. Hansen, and Mr. Carey were connected to Mr. Cox's residence. The vehicles used in acquiring the methamphetamine

precursors were traced to Mr. Cox's residence and actually seen at that site numerous times since November 2002. Thus, the *Thein* nexus requirement is satisfied.

Mr. Cox argues the affidavit information is stale. "In evaluating whether the facts underlying a search warrant are stale, the court looks at the totality of circumstances." *State v. Maddox*, 152 Wn.2d 499, 506, 98 P.3d 1199 (2004). "The length of time between issuance and execution of the warrant is only one factor to consider along with other relevant circumstances, including the nature and scope of the suspected criminal activity." *Id.* "[I]nformation is not stale for probable cause purposes if the facts and circumstances in the affidavit support a commonsense determination that there is continuing and contemporaneous possession of the evidence intended to be seized." *Id.* at 506; *see, e.g., State v. Merkt*, 124 Wn. App. 607, 614, 102 P.3d 828 (2004) (several months), *review denied*, 154 Wn.2d 1028 (2005); *State v. Hosier*, 124 Wn. App. 696, 716, 103 P.3d 217 (2004) (five-week delay). Ongoing activity is the focus.

Here, while any single piece of information, viewed in isolation, might be thought stale, the totality of the information established probable cause that the manufacturing of methamphetamine was ongoing and thus, current. Therefore, the trial court did not abuse its discretion in deciding the information taken together in a commonsense fashion was not stale. We defer to the trial court's decision and resolve doubts in favor of the warrant. *State v. Anderson*, 105 Wn. App. 223, 228, 19 P.3d 1094 (2001). The older information was merely corroborative of more recent facts.

In sum, sufficient evidence corroborates the information provided by the C.I. We conclude sufficient evidence supports the

No. 23966-7-III
State v. Cox

probable cause finding for the search warrant issued here.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Brown, J.

WE CONCUR:

Sweeney, C.J.

Kato, J.